

Briefing Paper
COMMITTEE ON RESOURCES
Oversight Hearing: Recreational Access to Federal Lands
May 23, 2001

Summary

The purpose of the hearing is to examine from a national perspective major issues affecting public access to federal lands by (1) **identifying** access problems and (2) discussing how to **restore** the proper balance between preservation of the natural resource and access and enjoyment by the recreational user.

Background

National Park Service:

While the 1916 Organic Act clearly establishes a dual and frequently conflicting mission to conserve resources within park units while providing these same areas for the enjoyment of the public, the intent of the Organic Act is clear - conservation is intrinsically tied to, and cannot be separated from a user enjoyment.

Nevertheless, the primary mission has become the subject of much controversy as access to a variety of park users has and continues to be restricted by the NPS through new regulations and management policies, and general management plan interpretations. It is also clear that the NPS, in close concert with preservationist groups during the Clinton Administration, placed paramount importance on the first part of the mission statement, "...to conserve the scenery..." while demoting the second part of the mission, "...to provide for the enjoyment..." by the public. Moreover, the Park Service, through an administrative fiat, defined a new resource - "natural quiet." The NPS feels that this additional "resource" must also be protected. All motorized modes of public access were also at the forefront as the Clinton Administration sought to limit the accessibility to the park system, such as Yosemite National Park and the Grand Canyon National Park.

The adversarial policies faced by many recreational users today - from air tours operators, snowmobilers, personal water craft and off-highway vehicle users, to backcountry campers and backcountry horse riders, are the product of a past administration more concerned with satisfying the environmental community's agenda for declaring all park units Wilderness Areas, rather than establishing multiple use policies based on sound science. In short, because the NPS has limited the access into the park system, enjoyment by the recreational visitor is not being met.

Although the dual mission of the Park Service seems abundantly clear, the law has been divided by the NPS which has been promoting the "conservation of the resource" over and above "for the enjoyment of the same" by the public. In fact, the NPS, in their Management Policies - 2001,

states unequivocally that the parts of this provision of law are not equal. The NPS asserted in its Draft Management Policies that “[t]here are dual elements to the Organic Act’s single fundamental purpose, but those elements are not equal. Rather, the Act is explicit that enjoyment of park resources and values is to be allowed only to the extent that can be done without impairing those resources and values.” However, in its Final version, the NPS recognized the true nature of the Organic Act. Moreover, a letter addressed to all Park Service employees crafted by the NPS Environment Leadership coordinator, stated that “[p]reserving and maintaining our precious resources for future generations is the most important part of our mission.” As shown in the original intent of the Organic Act, however, conservation is intrinsically tied and cannot be separated from user enjoyment.

These policy statements clearly demonstrate that the NPS has been moving to restrict and otherwise limit public access to our national parks for a number of years, especially under the Clinton Administration. Through various means the Park Service has been prohibiting, severely restricting, or limiting many forms of use in and throughout a number of park units. Customary uses such as snowmobiles and personal water craft, along with routine vehicular travel have been restricted as users have sought to enjoy the National Park System by modes of their own choice. Other activities such as air tours of certain parks (e.g., the Grand Canyon), or beach access used by the public (e.g., Cape Hatteras) have also been severely limited by the NPS.

An important area upon which the Park Service has focused a major effort is “soundscape management” and the restoration of “natural quiet” to the park system. The National Park Service defines natural quiet as, “the natural ambient sound conditions (e.g., non-mechanized sounds) found in the park.” At the Grand Canyon National Park, the NPS defines substantial restoration as “over half of the park meeting those conditions more than three-fourths of each day.” The NPS has also defined “natural quiet” as a resource rather than value. Of note, these definitions were developed without the benefit of any established scientific data or information. Nonetheless, the Park Service has used “natural quiet” as the basis for severely limiting past uses in a number of national parks such as Isle Royale in Michigan and Biscayne in Florida.

Bureau of Land Management:

In January 2000, the Bureau of Land Management (BLM) announced plans to develop a national strategy for ensuring environmentally responsible off-highway vehicle (motorized OHV) use on BLM-administered public lands. Today, motorized OHV use is firmly established as a major recreational activity on BLM-administered public lands.

In January 2001, BLM published its “National Management Strategy for Motorized Off-Highway Vehicle Use” in which BLM offers general guidance to land managers and recommends numerous actions aimed at creating a local framework for reviewing and resolving motorized OHV issues. In a major change from the Draft version of the Strategy, BLM did not include mountain bicycles and other non-motorized forms of transportation. Instead, the Strategy calls on BLM to develop a separate, comprehensive management strategy for non-motorized vehicles

and to consider developing regulations that would focus on such human-powered vehicles.

Meanwhile, the OHV, motorcycle and mountain bike users remain very concerned that the Final Strategy Plan contains guidelines that are inherently bad policy. For example, BLM intends to reevaluate all BLM administered lands containing habitat for **proposed** or listed threatened or endangered species and their **proposed** or designated critical habitat for designation as either limited or closed to the use of OHV. Yet the Endangered Species Act provides no authority for the protection of species upon a mere “proposal” to list a species or a proposal to designate critical habitat. Another concern in the Final Strategy Plan is that BLM states it “...will take additional measures to prevent impairment of wilderness values in wilderness study areas (WSA)...” The BLM states that it has the responsibility to ensure that the existing wilderness values of WSA’s are not degraded as far as to significantly constrain the Congress’s prerogative to either designate a WSA as wilderness or release it for other uses. Consequently, the possibility exists that these lands could be restricted to certain recreational uses for years without just cause should Congress eventually release the WSA lands.

Forest Service:

Access to national forests continues to be a serious concern among many people who use the forests for all kinds of outdoor recreation. Recent rulemaking efforts (planning rule, national road management policy, roadless rule, etc.) under the Clinton administration have caused much concern about the potential for existing roads to be closed and for no new development of roads even as population and demand for recreation increase over time. Over 90% of recreation in National Forests occurs in and close to roads. Roads should be maintained and repaired - not closed and lost to current or future recreation demand.

In the meantime, the Forest Service has developed the “Recreation Agenda” – a plan to address the needs and expectations of millions of people who use the national forests for recreation while protecting the health and integrity of the land. Congress thus far has applauded the effort. It has strong public involvement - the goals of improving outdoor recreation settings, facilities and services, and the intent to build partnerships – as good first steps. The key to success, though, will be in the agency’s ability to implement and accomplish the objectives. The Forest Service budget must ‘walk’ its Recreation Agenda ‘talk.’

U.S. Fish and Wildlife Service:

The statutory mission of the refuge system is “to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans”. Recreational and other uses of system lands are permitted if those uses are compatible with the purposes for which the refuge was established.

In 2000, 37 million people visited one or more National Wildlife Refuges. Nearly two million

came to hunt, more than six million to fish and more than seven million just to observe or photograph wildlife. Approximately 90 percent of refuge visitors will participate in wildlife-dependent recreational and educational activities. Currently, 302 refuges are open for hunting and 267 units are open for fishing. This represents more than 90 percent of all refuge acreage.

The National Wildlife Refuge System is comprised of federal lands that have been acquired or designated for the conservation and enhancement of fish and wildlife, and on which compatible recreation is allowed. The Service manages the system in accordance with the National Wildlife Refuge System Administration Act. The Act was amended and updated by the National Wildlife Refuge System Improvement Act of 1997 (P. L. 105-57). This landmark legislation established for the first time an organic law to ensure that the system is effectively managed in the future. A fundamental tenet of that law was a recognition of the valuable contributions of our nation's sportsmen and sportswomen whose excise taxes are spent to acquire refuge lands. P. L. 105-57 stipulates that wildlife-dependent recreation is a priority use within the refuge system. Furthermore, the Act clearly states that wildlife dependent uses shall receive priority consideration in both refuge planning and management and that these activities should be facilitated throughout the system.

Specific NPS Issues:

1) Snowmobiles: One use in national parks, snowmobiles, has been under intense scrutiny. In April 2000, the Department of the Interior announced its intention to prohibit snowmobile use in all the national parks, except those that allow it by statute. The Interior Department claims that snowmobile emissions are causing negative effects on the park ecosystems and that noise from the snow machines is an intrusion of "natural quiet" – even though existing NPS regulations currently permit snowmobile noise that does not exceed certain decibel levels.

When the Final Regulations were published in January 2001 (effective April 21), the NPS established interim actions to reduce the impact of snowmobile use during the winter use season of 2002-2003 and a prohibition effective at the end of the 2002-2003 winter use season. The rule allows for oversnow motorized recreation access by NPS-managed snowcoach only, with limited exceptions for continued snowmobile access to other public and private lands adjacent to or within Grand Teton National Park. According to the NPS, the decision to phase out most snowmobile use over the next three years in favor of multi-passenger snowcoaches best meets the legal mandates and protects park resources while offering winter visitors a range of experiences. However, it should be noted that the Service failed to address pollution generated by increased snowcoach use. The Service is also developing winter use plans for Yellowstone and Grand Teton which include the banning of public snowmobile access, thereby limiting the number of people who actually visit the park in the winter months.

While President Bush did delay the January Final Rule for 60 days, he decided on April 24 to let the Rule go forward; however, he remains confident that an agreement can be reached to allow limited recreational use of snowmobiles in Yellowstone and Grand Teton NP.

In the meantime, a provision in the Conference Report on H.R. 4577, Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2001, prohibits the NPS from expending funds to promulgate or enforce a final rule during the 2000-2001 or 2001-2002 winter snowmobile season below current use patterns in a unit of the National Park System.

2) Air Tours: Air tours of the national parks, most notably Grand Canyon, is another form of access that is being severely restricted by the NPS. With the passage of the National Parks Overflight Act in 1987, Congress stated that the Park Service and Federal Aviation Administration should work together to develop regulations for air tours within the park system, and more specifically, the Grand Canyon. In 1988, Special Federal Aviation Regulation 50-2 (SFAR 50-2) was issued, establishing minimum altitudes and flight-free zones over portions of the Grand Canyon. SFAR 50-2 was highly successful in reducing visitor complaints about noise from tour aircraft. However, this was not enough for the NPS which insists that a problem still exists. In 1996, President Clinton again directed the agencies to restore natural quiet in the Grand Canyon by 2008. On March 28, 2000, the FAA issued a new set of rules concerning overflights. These rules included the modification of the air tour routes, expansion of Flight Free Zones, and a limitation of the total number of commercial air tours in the Flight Area. However, by implementing these regulations, the air tour industry will be severely restricted. Because of these restrictions, the air tour industry may not be able to provide this form of access to over 800,000 park visitors.

Meanwhile, on April 16, 2001, the Committee sent a letter to Jane Garvey, Administrator, Federal Aviation Administration (FAA), requesting that the agency complete its statutory mandate to designate reasonably achievable quiet technology requirements for fixed-wing and helicopter aircraft and routes or corridors to be used by commercial air tour operators of fixed-wing aircraft and helicopter aircraft that employ quiet aircraft technology.

3) Personal Water Craft: The use of personal water craft (PWCs) is also being restricted by the Park Service. Once again, citing noise intrusion as the primary basis of new regulations, the Park Service points out that PWCs have a negative effect on the park environment. According to a report by the Park Service, these noise problems are compounded by several other characteristics of PWCs. The Park Service argues that because of the maneuverability of PWCs, users do not leave an area, but rather traverse the same area again and again. As a result, other park users are disturbed by the constant high-pitched whining sounds produced by the machines. The Administration also points to other factors, such as water quality damage caused by emissions, as a basis for limiting the public's access to certain waterways.

Because of these factors, the NPS issued final regulations on March 21, 2000, which effectively closed PWC use in all but 21 park units. The 21 remaining units may also be closed to PWC use pending the outcome of the superintendents compendium. As specifically provided in the regulations, the 21 park units could continue to allow PWC use until April 22, 2002, during which time each park superintendent would complete an appropriate analysis to determine the

impacts of PWC use in each park unit. Such analysis would evaluate impacts on water quality, air quality, “soundscapes”, wildlife and wildlife habitat, shoreline vegetation and visitor safety and conflict. Many superintendents are not following these guidelines. Ten of the parks may authorize PWC annually via a Compendium or indefinitely by promulgating special regulations while in the eleven other park units, PWC use may continue only through promulgated special regulations.

The March 21, 2000, Rule specifically stated that the April 22, 2002, “grace period” was to allow continued PWC use while an impact analysis could be completed in each identified park unit. The Rule was not designed to be an open invitation for each superintendent to arbitrarily decide prior to April 22, 2002, to eliminate PWC use. Yet on March 28, 2001, the superintendent for the Cape Lookout National Seashore sent out a press release stating that effective immediately, PWC would be prohibited throughout the park unit. In addition, the Subcommittee is aware that the following park units from the 21 listed in the Final Rule have already decided prior to their April 22, 2002, deadline to prohibit PWC use: Cape Cod NS; Cumberland Island NS; Gulf Islands NS; Padre Island NS; Indiana Dunes NS; and Delaware Water Gap NRA.

4) Vehicle Access: Another significant issue in restricting traditional public access to national parks is the direction of the NPS to limit vehicular entry into parks by substituting light rail and/or bus transportation systems. The NPS has already implemented transportation systems in Zion and Bryce Canyon National Parks and has developed major transportation plans for Grand Canyon and Yosemite National Parks. Without questions, these new transportation systems are very costly. The system planned for Grand Canyon, for example, is estimated to cost approximately \$250 million. Although this expense will be the responsibility of the private sector, admission fees will be charged to cover the cost of the construction and operation of the system. This cost per visitor at both Grand Canyon NP and Yosemite NP have not yet been determined, but may be prohibitive.

However, cost recovery from admission fees may need to be set at such a high price as to exclude many park visitors. Another factor in the new transportation systems is the impact on the public and how they will react to them. Many people foresee the public being intolerant of leaving their cars and belongings behind in order to access parks only by bus and rail or both. The obvious result is that people will cease to visit the national parks. This would be good news to preservation groups like the National Parks and Conservation Association (NPCA) along with the Park Service. It is not a far stretch to presume that the Park Service, with the help of NPCA has, by design, purposely implemented these systems knowing full well that the ultimate result will be a decrease in the number of people visiting the park units.

Specific BLM Issue:

On January 10, 2001, the Bureau of Land Management published a document entitled “Wilderness Inventory and Study Procedures” (H-6310-1). While this handbook contains BLM’s policies, direction, general procedures, and guidance for all future wilderness inventories and

future designations of Wilderness Study Areas, it is indicative on how the other agencies within the Department of Interior have and continue to implement Wilderness policy. It appears that the Bureau believes that it has the authority to designate and manage Wilderness Areas, Wilderness Study Areas, and other lands that may have wilderness characteristics.

The following is a small sampling from the document that illustrate BLM's questionable authority:

1) .06 (D) Policy - Other Public Lands That May Require a Wilderness Inventory - "This includes lands included in proposed legislation, or lands within externally generated proposals that document new or supplemental information regarding resource uses and condition of the lands not addressed in current land use plans and/or prior wilderness inventories."

2) .06 (E) Policy - Evaluation of New Information Suggesting That An Area of Public Lands Has Wilderness Characteristics - "BLM may, from time to time, receive requests from the public suggesting that existing plans do not adequately identify public lands that have wilderness characteristics." "If the BLM determines that the area in question (or a significant portion thereof) may have wilderness characteristics, and if actions are proposed that could degrade the wilderness values of the roadless character so as to disqualify the area from further consideration as a WSA, as discussed, the BLM should, as soon as practicable, initiate a new land use plan or plan amendment to address the wilderness values."

3) .06 (F) Policy - Evaluation of Actions Proposed in Areas that May Have Wilderness Characteristics. "When an action is proposed in an area that BLM determines may have wilderness characteristics..., degrade the wilderness values of the roadless character so as to disqualify the area from further consideration as a WSA, the BLM must consider in the NEPA document an alternative of mitigating or relocating the proposed action..."

4) .1(.12) The Wilderness Inventory Process - "Inventory areas found to possess the requisite wilderness values will be further evaluated through the land use planning process to determine if they should be designated as WSA's."

5) .1(.12)(A)(1) Identify Inventory Areas - "An inventory area may be larger than the actual acquired lands because of the need to look at any contiguous roadless federal lands."

6) .13(B)(1) Wilderness Values - Wilderness Inventory and Study Procedures - Size - "Determine if the inventory area...has at least 5,000 acres of land or is sufficient size as to make practicable its preservation and use in an unimpaired condition" "Roadless areas of less than 5,000 acres of contiguous public lands where any one of the following apply...(1) They are contiguous with lands which have been formally determined to have wilderness or potential wilderness values and (2) It is demonstrated that the area is clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired conditions, and of size suitable for wilderness management."

7) .13 (D) Wilderness Values - Possibility of the Area Returning to a Natural Condition - "...may be further considered for designation as a WSA when it is reasonable to expect that human imprints will return or can be returned to a substantially unnoticed level either by natural processes or by had labor."

Specific FWS Issue:

Galeville Airport: This airport was used for many years by cadets of the West Point Military Academy for parachute training and field maneuvers. In 1970, the Academy allowed members of the Eastern U. S. Flight Conference to fly their model aircraft at the airport. This activity, which included training and competitions, lasted for nearly thirty years. During that period, aeromodelers contributed to the maintenance of the airport site by clearing the underbrush and mowing the fields on a regular basis. This created a grassland habitat.

In addition, the Department of the Army conducted two separate environmental studies on the use of Galeville by model airplane enthusiasts. In each instance, the Army study found "no adverse impact on flora and fauna in the region as a consequence of aeromodeling activity".

In 1994, the Department of Defense determined that the 621 acre Galeville Army Training Facility, was no longer required as a training site for West Point cadets. The General Services Administration obtained title to this surplus federal property and it was transferred to the U. S. Fish and Wildlife Service. In 1999, this land become the basis of the newly created Shawangunk Grasslands National Wildlife Refuge. This refuge is managed as a satellite of the Wallkill River National Wildlife Refuge in Sussex, New Jersey which is located about 40 miles from Galeville in the Congressional District of Congresswoman Marge Roukema. While Wallkill River has a staff of five employees of the U. S. Fish and Wildlife Service, the Shawangunk Grasslands National Wildlife Refuge is an unmanned facility. At this time, the Director of the U. S. Fish and Wildlife Service is considering a proposal to expand Wallkill River by 2,800 acres and Shawangunk by 2,000 acres which would be more than three times its current size.

Prior to its designation as a refuge, the U. S. Fish and Wildlife Service was approached by the Eastern U. S. Freeflight Conference. The Conference expressed their strong desire to continue to use the airport since it was the last model airplane flying site available in the Northeastern United States capable of meeting international flying standards. In return, the Conference committed to: limit flying to weekends in April through October; hire an environmental professional to monitor impacts on wildlife at the field; provide sanitation facilities and maintain the grasslands environment. This environment was created by the airport and if left undisturbed, the grasslands would be replaced by shrubs and trees which are not ideal habitat for neotropical migratory birds that have nested in and visited the Galeville airport for generations.

Despite the DOD studies and the Service's lack of resources to maintain the grasslands, on December 7, 1997, model aircraft flying was prohibited by the U. S. Fish and Wildlife Service at Galeville. This was even before the refuge was officially created. The Service indicated that

“model airplane flying would have a major adverse effect on the grassland-dependent migratory birds on the site”. At the same time, the Service indicated that “keeping this grassland and controlling the invasion of weeds, woody shrubs, and trees is the highest management priority for the refuge”.

Agencies that Administer the Majority of Public Lands:

1) National Park Service

Yellowstone National Park (NPS) was established by an Act of Congress on March 1, 1872, as the Nation's first national park. Fifty-six years later, the National Park Service was created by an Act (“Organic Act”) signed by President Woodrow Wilson on August 25, 1916.

Through the Organic Act, the National Park Service (NPS) is charged to “promote and regulate the use of the Federal areas known as national parks, monuments, and reservations...which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in a manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

When the Organic Act was enacted in 1916, the Park System consisted of just 35 national parks and monuments, but has now blossomed into 384 units covering more than 83.3 million acres in 49 states, the District of Columbia, American Samoa, Guam, Puerto Rico, Saipan, and the Virgin Islands. These areas include national parks, monuments, battlefields, military parks, historical parks, historic sites, lakeshores, seashores, recreation areas, scenic rivers and trails, and the White House. With this growth the expected management problems have also continued to rise.

2) Bureau of Land Management

The Bureau of Land Management (BLM) was established via the Land Ordinance Act of 1785 to survey the settlement of the original thirteen colonies. In 1946, the Bureau was formally created within the Department on Interior to manage public lands. Today, the Bureau manages 264 million acres - 1/8 the land in the United States - most of which is located west of the Mississippi River including Alaska, and is dominated by extensive grasslands, forests, high mountains, arctic tundra, and deserts. Within these lands, the BLM manages a wide variety of resources and uses, including energy and minerals, timber, forage, wild horse and burro populations, fish and wildlife habitat, wilderness areas, archaeological, paleontological, and historical sites. The Bureau also manages about 300 million additional acres of subsurface mineral resources and is responsible for wildfire management and suppression on 388 million acres.

3) Fish and Wildlife Service

The Fish and Wildlife Service (FWS) was established in 1871 as the U.S. Fish Commission to study the decrease of the nation’s food fishes and to recommend ways to reverse the decline.

Following a number of reorganizations, the Fish and Wildlife Service was formally established in 1956 and placed within the Department of Interior. The FWS has two main divisions - Ecological Services and Refuges and Wildlife.

Today, the FWS manages over 94 million acres of public land, including 535 National Wildlife Refuges, 38 wetland refuges and 66 National Fishery Hatcheries. The mission of the U.S. Fish and Wildlife Service is to work with others to conserve, protect and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people. It is the only agency of the U.S. Government with that primary mission.

4) U.S. Forest Service

The United States Forest Service (FS), an agency within the Department of Agriculture, was established in 1905 to provide quality water and timber for the Nation's benefit. Today, the Service manages 191 million acres of national forests and grasslands, an area equivalent to the size of Texas. The Forest Service is also the largest forestry research organization in the world, and provides technical and financial assistance to State and private forestry agencies.

Over the years, and in response to public comment, Congress directed the Forest Service to manage national forests for additional multiple uses and benefits and for the sustained yield of renewable resources such as water, forage, wildlife, wood, and recreation. Multiple use includes backpacking in remote, unroaded wilderness areas, mastering an all-terrain vehicle over a challenging trail, enjoying the views along a scenic byway, or fishing in a trout stream. According to the Service, 43% of all recreation on public lands occurs on lands administered by the Forest Service.

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